

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDELTON DIVISION

**BARBARA GENTA, on behalf of herself
and all others similarly situated;
KRISTOPHER FISHER, on behalf of
himself and all others similarly situated,**

Plaintiffs,

v.

3D IDAPRO SOLUTIONS, LLC,

Defendant.

No. 2:19-cv-00286-SU

OPINION AND ORDER

MOSMAN, J.,

On September 16, 2020, Magistrate Judge Patricia Sullivan issued her Findings and Recommendation (F. & R.) [ECF 40]. Judge Sullivan recommended that I grant in part and deny in part Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement Agreement [ECF 38]. Upon review, I ADOPT in part Judge Sullivan's F. & R. As discussed below, I find that Plaintiffs' preliminary request for attorney fees and costs is fair and reasonable. Plaintiffs are ORDERED to submit within 14 days of this Opinion and Order an amended notice reflecting a fee and cost recovery that would not exceed 25%.

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DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F. & R. to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F. & R. depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F. & R. 28 U.S.C. § 636(b)(1)(C).

Judge Sullivan recommended that I approve the conditional certification of the proposed class and approve the proposed class notice. Upon review, I agree with Judge Sullivan's recommendation, and I ADOPT the F. & R. as to this point.

Judge Sullivan also recommended that Plaintiffs be given 14 days to submit evidence in support of the claimed attorney fees and costs, totaling 35% of the settlement fund. "Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). "Because the benefit to the class is easily quantified in common-fund settlements," a district court may "award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the

lodestar.” *Id.* Absent special circumstances, the court will not approve a fee percentage higher than the benchmark of 25% of the fund. *Id.*

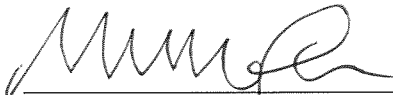
However, after Judge Sullivan’s recommendation, Plaintiffs’ counsel advised that they will not be seeking an award that exceeds the 25% benchmark. Objs. [ECF 42] at 2. Counsel further advised that they “will supply the Court with a complete itemization of all costs and receipts associated with the case” and “a specific breakdown of attorney time and staff time” with their motion for final approval. *Id.* Considering this new information, I find that Plaintiffs’ preliminary request for attorney fees and costs, which shall not exceed the 25% benchmark, is fair and reasonable.

CONCLUSION

For the above reasons, I ADOPT in part Judge Sullivan’s F. & R. [ECF 40]. I approve the conditional certification of the proposed class and approve the proposed class notice. I further find that Plaintiffs’ preliminary request for attorney fees and costs is reasonable. I therefore ORDER Plaintiffs to submit within 14 days of this Opinion and Order an amended notice reflecting a fee and cost recovery that would not exceed 25%. I will then enter an order granting preliminary approval of the settlement agreement.

IT IS SO ORDERED.

DATED this 17 day of November, 2020.


MICHAEL W. MOSMAN
United States District Judge